



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew Honeycutt
160 Deer Forest Trail
Fayetteville, GA 30214

AUG 9 2010

RE: MUR 6138

Dear Mr. Honeycutt:

On December 8, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and other available information, the Commission, on May 25, 2010, found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. § 441d(a), a provision of the Act. There were an insufficient number of votes to find reason to believe that you violated 2 U.S.C. § 441h(a). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information. Also on May 25, 2010, the Commission was equally divided on whether to find reason to believe that you violated 2 U.S.C. § 441h(a). Accordingly, the Commission closed this portion of the file. A Statement of Reasons explaining the Commission's decision will follow.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented

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by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

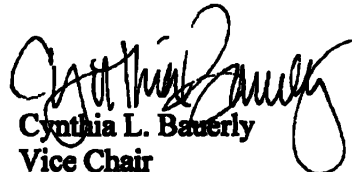
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Shana Broussard, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Cynthia L. Bauerly
Vice Chair

Enclosures

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Andrew Honeycutt MUR 6138

I.

GENERATION OF MATTER

This matter was generated by a Complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Virial. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The Complaint alleges that Andrew Honeycutt ("Honeycutt"), campaign chairman for Honeycutt for Congress ("HFC") and spouse to candidate Deborah T. Honeycutt, violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with communications critical of Honeycutt's opponent, U.S. Representative David Scott. First, the Complaint alleges Andrew Honeycutt, as an agent of HFC, authorized the production of the communication titled "Corrupt" that included a disclaimer stating that it was paid for by DemocratsforGoodGovernment.com, even though an invoice and HFC disclosure report indicate that HFC in fact paid for it. *See* Complaint Exhibit A. In addition, the Complaint alleges that Andrew Honeycutt, as an agent of HFC, fraudulently misrepresented himself as speaking on behalf of the Democratic Party because the "Corrupt" communication included a depiction of the Democratic Party donkey logo. *See. id.*

As set forth below, the Commission finds reason to believe that Andrew Honeycutt knowingly and willfully violated 2 U.S.C. § 441d(a) because it appears that

Honeycutt authorized and HFC paid for a communication that identified another entity paid for it. Further, the Commission finds no reason to believe the allegation that Andrew Honeycutt, as an agent of HFC, fraudulently misrepresented himself as acting on behalf of the Democratic Party. *See* 2 U.S.C. § 441h(a).

III. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In the 2008 general election, Deborah T. Honeycutt was the Republican candidate for Congress opposing the Democratic incumbent, Rep. David Scott, in the 13th Congressional District of Georgia. HFC is the principal campaign committee for Deborah T. Honeycutt. The available information indicates that Andrew Honeycutt, the candidate's spouse, is the Committee's campaign chairman.

1. Democrats for Good Government and David Knox

DGG is an organization created by David Knox.

See <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political committee with the Commission or the Georgia State Ethics Commission, and is not registered with the IRS as a section 527 organization. According to DGG's website, it is "[t]he place to get the facts about Democrats who are really doing the work for Democrats." *See id.* However, the entire content of the website appears to focus on material opposing a single candidate, Rep. Scott, including portions of local newspaper articles that are highly critical of Rep. Scott. *See id.*

Knox is also the owner and operator of DK Intermedia, a website development company. Both Knox and DK Intermedia were vendors to HFC for Deborah T. Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both

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1 general elections. The DK Intermedia website indicates it created an “informational site”
2 for Honeycutt’s 2006 congressional campaign.¹ According to HFC’s disclosure reports,
3 the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for
4 “website and photos,” \$750 and \$350 on May 9 and July 7, 2006, respectively, for
5 “consulting-graphics/website maintenance,” and \$350 and \$250 on July 31, 2006 and
6 February 6, 2007, respectively, for “consulting-graphics/website.” HFC disbursed \$525
7 to DK Intermedia on May 7, 2008 for internet consulting.

8 The website for Democrats for Good Government contains a link to
9 www.voteoutdavidscott.com.² The site begins with a heading “Georgia’s Congressional
10 13th District Corrupt Congre\$\$man,” and continues with a cartoon figure identified as
11 Rep. Scott sitting at a desk surrounded by individuals identified as “Lobbyist” and piles
12 of cash with the U.S. Capitol in the background. The website directs the viewer to
13 “Check Him Out and Vote Him Out!!!” Several pages into the website is the cartoon
14 depiction of Scott sitting on a mound of cash as included on the “Corrupt”
15 communication. The website concludes, “No Disclaimer Necessary – We only work for
16 the government part-time (ourselves the rest of the time.) Sponsored by Democrats for
17 Good Government!”
18

¹ The website states that “this site is no longer a part of this portfolio. There is no support for this candidate [sic].” [Emphasis in original]. http://www.dkextra.com/portfolio/web_port.htm

² The website link, www.voteoutdavidscott.com is now closed; however, the website can be accessed through the Democrats for Good Government website found at <http://www.democratsforgoodgovernment.com/voteoutdavidscott.com>.

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1 2. "Corrupt" Communication

2 A copy of the "Corrupt" communication at issue is included with the Complaint
3 as Exhibit B. One side of the communication begins with the heading "**CORRUPT**
4 **DAVID SCOTT,**" followed by a picture of Rep. Scott and the statement "David Scott is
5 **CORRUPT!!!**" The communication then refers the reader to
6 www.voteoutdavidscott.com. The communication also contains a depiction of the
7 Democratia Party donkey logo and the tagline, "Your Vote Counts for Change!" The
8 other side of the communication refers to Scott as "The Worst Black Congressperson,"
9 and includes a cartoon depiction of Rep. Scott sitting on a mound of cash with the U.S.
10 Capitol in the background. Both sides of the communication contain a disclaimer stating
11 that it was paid for by "DemocratsForGoodGovernment.com." See Complaint Exhibit B.
12 Neither the Complaint nor other available information indicates how the communication
13 was distributed.

14 The Complaint also provided an invoice dated August 26, 2008 from
15 48HourPrint.com in the amount of \$1,385.75 for 25,000 double-sided "3.5 x 8.5 Rack
16 Cards -- Corrupt." Complaint Exhibit A. The invoice was billed to "Andrew" at 160
17 Deer Forest Trail, Fayetteville, Georgia, and includes a "blind shipping address" for
18 "David" at 2326 Nicole Drive, Hampton, Georgia. The invoice "Ship to" addressee is
19 David Knox at an address in Jonesboro, Georgia. Public records indicate that Deborah
20 and Andrew Honeycutt are the owners of the Fayetteville address. HFC disclosed a
21 \$1,385.75 payment to 48 Hour Print on August 29, 2008 for "Printing" that corresponds
22 to the invoice.

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B. Legal Analysis

1. "Corrupt" Communication Disclaimer

The Complaint alleges that the "Corrupt" communication did not include the required disclaimer. A political committee that makes a disbursement to finance a public communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Disclaimers are also required for public communications financed by any person that expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass mailings" and "any other general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has determined that campaign literature "distributed to the general public at their place of residence...constitutes general public political advertising." See MUR 4741 (Mary Bono Committee) Factual and Legal Analysis (finding reason to believe that the Committee violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left on doorknobs of residences).

The disclaimer for a communication that is paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the

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1 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.

2 § 441d(a)(3). The Commission now addresses the communication in question.

3 The Complaint alleges that Honeycutt violated the Act's disclaimer provisions
4 when Honeycutt authorized, and HFC paid for a communication, "Corrupt," that failed to
5 state that Deborah T. Honeycutt authorized it or that HFC paid for it. The available
6 information, including the HFC's amended 2008 October Quarterly Report and the
7 invoice, *see* Complaint Exhibit A, indicates that HFC in fact paid \$1,385.75 for 25,000
8 "Corrupt" "rack cards" on August 29, 2008. However, neither the "Corrupt"
9 communication, the Complaint, nor other available information indicates how the
10 communication was disseminated. HFC's amended October Quarterly Report includes
11 disbursements on September 5, 2008 to Donald W. Allen II, in the amount of \$1,000.00
12 for consulting/canvassing and on September 25, 2008 to Dan P. Young, in the amount of
13 \$4,000 for consulting/canvassing, which may be related to the dissemination of
14 "Corrupt." If the communication qualifies as a public communication, i.e., if it was mass
15 mailed, *see* 11 C.F.R. § 100.27, or otherwise qualifies as general public political
16 advertising, the communication would need to contain a disclaimer stating that HFC paid
17 for and authorized the communication. *See* 2 U.S.C. § 441d(a)(1). Because the
18 communication did not include such a disclaimer, Respondent may have violated
19 2 U.S.C. § 441d(a).

20 The available information further suggests that such a violation may have been
21 knowing and willful. The phrase knowing and willful indicates that "actions [were] taken
22 with full knowledge of all of the facts and recognition that the action is prohibited by
23 law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628

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1 F.2d 97-98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a “willful”
2 violation includes “such reckless disregard of the consequences as to be equivalent to a
3 knowing, conscious, and deliberate flaunting of the Act,” but concluding on the facts
4 before it that this standard was not met); *National Right to Work Comm. v. FEC*, 716 F.2d
5 1401, 1403 (D.C. Cir. 1983) (same). The available information indicates that the HFC,
6 through its agent Andrew Honeycutt, ordered the “Corrupt” communication, and as
7 indicated by the 48HourPrint.com invoice, provided the personal address of the candidate
8 and campaign chairman as the billing address. However, “Corrupt” includes a
9 disclaimer, “Paid for by DemocratsforGoodGovernment.com,” and contains the same
10 headline, “The Worst Black Congressperson,” and cartoon depiction of Rep. Scott as
11 included on the DGG website.

12 Honeycutt’s apparent efforts to try to hide his involvement with the “Corrupt”
13 communication so that any recipients would not know that Honeycutt or the Committee
14 authorized and paid for “Corrupt” further supports a recommendation that Andrew
15 Honeycutt knowingly and willfully violated the Act. The available information indicates
16 an ongoing relationship between HFC and David Knox. *See supra* p. 2 ln. 21- p. 3 ln.7.
17 In addition, the invoice at Complaint Exhibit A further supports this ongoing relationship
18 because it lists the name “Andrew” and the billing address for the candidate and her
19 spouse and campaign chairman, Andrew Honeycutt, as well as the name “David.” *See*
20 *supra* p. 4 ln. 14-22. By paying for a communication with a disclaimer stating that a
21 third-party organization paid for it, Honeycutt attempted to conceal his identity as the
22 person that authorized and that HFC paid for the 25,000 rack cards. Honeycutt attempted
23 to avoid any explicit connection between the “Corrupt” communication and the

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Honeycutt campaign by stating that DGG paid for the "Corrupt" communication.³ Thus, Respondent appears to have knowingly and willfully violated the Act. Accordingly, the Commission finds reason to believe that Andrew Honeycutt, knowingly and willfully violated 2 U.S.C. § 441d(a).

2. Alleged Fraudulent Misrepresentation

In addition, the Complaint alleges that, by including a depiction of a logo similar to the logo of the Democratic Party on "Corrupt," Andrew Honeycutt, acting on behalf of HFC, fraudulently misrepresented that the mailer was disseminated by the Democratic Party. Complaint at 5. The Act prohibits federal candidates and their employees or agents from fraudulently misrepresenting themselves, or any organization under their control, as speaking or otherwise acting on behalf of any other candidate or political party on a matter which is damaging to such other candidate or party. 2 U.S.C. § 441h(a).⁴ In past enforcement matters dealing with fraudulent misrepresentation allegations, the Commission has focused its analysis on whether the Respondent was acting like the "official" party organization. *See* MUR 4919 (Charles Ball for Congress); *see also* MUR 5444 (National Democratic Campaign Comm.). In MUR 4919 (Ball), the Commission found reason to believe that the Committee, Campaign Manager, and Finance Director knowingly and willfully violated 2 U.S.C. § 441h, and that the Committee treasurer violated 2 U.S.C. § 441h, when Respondents, on behalf of the Republican candidate in the California's 10th Congressional district, disseminated a communication within days of

³ Honeycutt was campaign chairman for an experienced candidate and political committee with a professional treasurer. Honeycutt was a candidate in 2006 as well as 2008 and HFC's treasurer, Scott Mackenzie, is an "FEC Compliance Officer" with BMW Direct, a Washington, D.C. political consulting firm. HFC's disclosure reports indicated total activity in amounts exceeding \$1.1 million and \$4.7 million for the 2006 and 2008 election cycles, respectively.

⁴ Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGG used the logo in connection with soliciting funds.

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1 the general election to Democratic voters in the district that was purportedly prepared by
2 a fictitious local party committee, the East Bay Democratic Committee, and signed by a
3 Democratic Congressman of a neighboring district that expressly advocated the defeat of
4 the Democratic incumbent. The communication's text suggested that committee was a
5 legitimate organization within the Democratic Party by including language such as
6 "Representing all Democrats in the East Bay." The communication urged the defeat of
7 the incumbent but did not include a disclaimer identifying who paid for it or whether it
8 was authorized by any candidate or committee.⁵

9 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"
10 communication cannot be construed as an instrument of an "official organization" within
11 the Democratic Party. Neither the complete name of the organization "Democrats for
12 Good Government" nor the use of the word "Democrat" is sufficient to conclude that
13 Respondents attempted to damage the Democratic Party. *See* 2 U.S.C. § 441h(a).
14 "Corrupt" does not contain text designed to make the communication appear that the
15 source of this communication was the Democratic Party. *See* Complaint Exhibit B.
16 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general
17 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"
18 communication does not rise to the level of a violation of section 441h(a). The donkey
19 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the
20 bottom left portion of the "Corrupt" communication that expressly advocates the defeat
21 of Rep. Scott. *See* Complaint Exhibit B. The available information does not suggest that
22 DGG represents itself as an arm of the official Democratic Party structure, such as a

⁵ After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

- 1 district or local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, the
- 2 there is no reason to believe allegation that Andrew Honeycutt, as an agent of HFC,
- 3 fraudulently misrepresented himself as acting on behalf of the Democratic Party. *See*
- 4 2 U.S.C. § 441h(a).

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